I've seen some posts on the social media site formally known as Twitter arguing that the *Seven County* case is a win for an abundance-focused policy – in that it will facilitate more construction of infrastructure by eliminating or reducing environmental reviews. I think that statement is somewhat accurate in general. But I think it is much less true when it comes to clean energy. In other words, I think the case is generally speaking a big win if you want more oil and gas development, but is pretty meh when it comes to clean energy. (And this despite the fact that the majority opinion in *Seven Counties* went out of its way to argue that NEPA was hamstringing clean energy projects.) Why do I think that?

As I discussed in my series of blog posts with Dan Farber earlier this week, the key rulings in the *Seven Counties* case trim back on indirect effects analysis in NEPA reviews. Specifically, if the indirect effects of a proposed project would in fact be the result of a separate project, distant in time and space, or a project that would be under the regulatory authority of another agency, then those indirect effects generally need not be considered in environmental review for the proposed project.

That makes a big difference for fossil fuel extraction projects, since in most cases the extraction is overseen by a different federal agency than the refining or combustion of the fossil fuel. For instance, leasing of federal lands for fossil fuel development is overseen by agencies such as the Forest Service or BLM. But the combustion, use, or refining of that fossil fuel downstream is overseen by state environmental agencies, or EPA, and it occurs distant in time or space. That doesn't mean that the leasing decisions for fossil fuels will not still involve significant environmental review. It is just the climate impacts of those decisions may no longer be covered under NEPA. (Dan and I noted there is some uncertainty on this issue given the opinion's very minimal reference to climate change.)

On the other hand, leasing lands for renewable projects (solar or wind) never involved any significant climate impacts to begin with. Thus, the NEPA issues those projects faced remain today after the Seven Counties case, and they probably haven't received any major benefits from the decision.

Infrastructure projects are probably the biggest beneficiaries of the decision. Fossil fuel pipelines, electricity transmission lines, railroads and highways and mass transit lines all move people or goods or energy from one place to another. That means that they will have indirect effects over the locations that the projects connect, for instance by encouraging development "upstream" or "downstream" of the project, with associated environmental effects. The *Seven County* decision cuts

back on NEPA review of these indirect effects to the extent that they are distant in time or space from the original project, and to the extent that they are covered by another agency.

For instance, fossil fuel pipelines will encourage development of oil and gas resources "upstream" that now have the ability to move their product to market more easily, and that will produce impacts on the ground in terms of wildlife, as well water and air quality. They will also have "downstream" impacts in terms of the refining or combustion of the product. Again, these effects may not be covered in the NEPA review of the original project, and in fact that means in many cases there may never be any NEPA review of these effects – "upstream" development for instance may be covered by state and local agencies that are not subject to NEPA, and as noted above "downstream" development is covered by either non-federal agencies, or EPA which is generally exempt from NEPA when it does its permitting decisions.

The same may be true of electricity transmission lines. They will support "upstream" development of additional renewable energy production facilities, and they may facilitate "downstream" development of additional facilities to consume the electricity, such as data centers.

But there is still significant asymmetry here between at least some fossil fuel infrastructure and other infrastructure projects. That is because natural gas pipelines, and liquid natural gas terminals (which have both been major sources of NEPA litigation over climate impacts) are under the exclusive regulation of a federal agency, the Federal Energy Regulatory Commission. That means that these projects only face federal regulation (they are exempt from state or local permitting), so if the NEPA process is made easier for these projects, that will much more easily translate into streamlined permitting over all for the projects.

This is not the case for electricity transmission lines (or, for that matter, oil pipelines). For electricity transmission lines, FERC approval may be required, for instance for determining who will pay for the line. But most of the regulatory burdens for transmission lines comes at the state and local level, and the research makes clear that it is this regulatory quagmire that has been a major obstacle to constructing more lines. (See Alexandra Klass' excellent work on this point.) So any NEPA streamlining in this context may have only limited benefits for accelerating electricity transmission systems.

The end result of *Seven County* then, is abundance for fossil fuel, but not so much for clean energy. My guess is that this is welcome news to the petitioners, the amici that supported them, and the majority of the Court. However, it's an open question whether this should be the kind of abundance that those advocating for an abundance-oriented policy should be pursuing, especially those who argue that they are pursuing abundance for clean energy goals.